

## HOUSE OF REPRESENTATIVES STAFF FINAL BILL ANALYSIS

**BILL #:** CS/HB 1413 Pub. Rec./Structured Settlement Payees

**SPONSOR(S):** Civil Justice & Property Rights Subcommittee, Snyder

**TIED BILLS:** **IDEN./SIM. BILLS:** CS/SB 1526

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**FINAL HOUSE FLOOR ACTION:** 108 Y's      3 N's      **GOVERNOR'S ACTION:** Approved

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### SUMMARY ANALYSIS

CS/HB 1413 passed the House on March 7, 2022, as CS/SB 1526.

Article I, section 24(a) of the Florida Constitution sets forth the state's government records access policy, guaranteeing each person a right to inspect or copy any public record of the legislative, executive, and judicial branches of government. However, the Legislature may provide a public records exemption by general law if the exemption passes by a two-thirds vote of each chamber, states with specificity the public necessity justifying the exemption ("public necessity statement"), and is no broader than necessary to meet its public purpose.

A "structured settlement" is an arrangement for periodic payment of damages for personal injuries established by settlement or judgment in resolution of a tort claim. Florida law generally authorizes a structured settlement's recipient, with court approval and compliance with statutory requirements, to transfer his or her right to receive payments under the structured settlement in exchange for a lump sum of cash. However, during the transfer proceedings, some payees and their family members, dependents, and beneficiaries, risk becoming the victims of criminal and other fraudulent acts connected to the disclosure of personal identifying information and annuity contract numbers in related court records, which are currently open for public inspection. Dishonest actors who purport to be from legitimate entities may use the personal identifying information and annuity contract numbers contained in public court records to intercept the transfer payment or obtain sensitive information, such as bank account and social security numbers.

The bill exempts from public records requirements the personal identifying information and annuity contract numbers of a structured settlement's payee and the names of such person's family members, dependents, and beneficiaries contained within a court file relating to a transfer proceeding. Such exemption applies only during the pendency of the proceeding and for six months after the final court order approving or denying the transfer application.

The bill provides that the exemption is subject to the Open Government Sunset Review Act and will be repealed on October 2, 2027, unless reviewed and saved from repeal by the Legislature. The bill also provides a statement of public necessity as required by the Florida Constitution.

The bill does not appear to have a fiscal impact on state or local governments.

The bill was approved by the Governor on May 19, 2022, ch. 2022-125, L.O.F., and becomes effective on July 1, 2022.

## I. SUBSTANTIVE INFORMATION

### A. EFFECT OF CHANGES:

#### Background

##### Public Records

Article I, section 24(a) of the Florida Constitution sets forth the state's government records access policy, guaranteeing every person a right to inspect or copy any public record of the legislative, executive, and judicial branches of government. However, the Legislature may provide a public records exemption by general law if the exemption passes by a two-thirds vote of each chamber, states with specificity the public necessity justifying the exemption ("public necessity statement"), and is no broader than necessary to meet its public purpose.<sup>1</sup>

Additionally, s. 119.07(1), F.S., guarantees every person a right to inspect and copy any state, county, or municipal record, unless the record is exempt. Under the Open Government Sunset Review Act,<sup>2</sup> a public records exemption may be created or maintained only if it serves an identifiable public purpose and the "Legislature finds that the purpose is sufficiently compelling to override the strong public policy of open government and cannot be accomplished without the exemption."<sup>3</sup> Further, the exemption may be no broader than is necessary to:

- Allow the state or its political subdivisions to effectively and efficiently administer a governmental program, which administration would be significantly impaired without the exemption;
- Protect sensitive personal information that, if released, would be defamatory or would jeopardize an individual's safety; or
- Protect trade or business secrets.<sup>4</sup>

The Open Government Sunset Review Act requires the automatic repeal of a newly created exemption on October 2nd of the fifth year after creation or substantial amendment, unless the Legislature reenacts the exemption.<sup>5</sup> However, this provision does not apply to an exemption that:

- Is required by federal law; or
- Applies solely to the State Legislature or the State Court System.<sup>6</sup>

##### Court Proceedings and Records

Independent of constitutional and statutory provisions that generally require court files to be open to the public, the courts have found that "both civil and criminal court proceedings in Florida are public events" and that courts must "adhere to the well-established common law right of access to court proceedings and records."<sup>7</sup> A court may close a court file or a portion thereof on equitable grounds, but its ability to do so is limited due to the Florida Supreme Court's ruling that closure of court proceedings or records should occur only when necessary to:

- Comply with established public policy set forth in the constitution, statutes, rules, or case law;
- Protect trade secrets;
- Protect a compelling governmental interest (such as national security or confidential informant identity);
- Obtain evidence to properly determine legal issues in a case;
- Avoid substantial injury to innocent third parties (such as to protect young witnesses from offensive testimony or children in a divorce); or

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<sup>1</sup> Art. I, s. 24(c), Fla. Const.

<sup>2</sup> S. 119.15, F.S.

<sup>3</sup> S. 119.15(6)(b), F.S.

<sup>4</sup> *Id.*

<sup>5</sup> S. 119.15(3), F.S.

<sup>6</sup> *Id.*

<sup>7</sup> *Barron v. Florida Freedom Newspapers, Inc.*, 531 So. 2d 113, 116 (Fla. 1988).

- Avoid substantial injury to a party by disclosure of matters protected by a common law or privacy right not generally inherent in the specific type of civil proceeding sought to be closed.<sup>8</sup>

### Structured Settlements

A "tort" is a wrong for which the law provides a remedy. The purpose of tort law is to fairly compensate a person harmed by another person's wrongful acts, whether intentional, reckless, or negligent, through a civil action or other comparable process, which ultimately may result in the payment of monetary damages to the plaintiff.

A "structured settlement" is an arrangement for periodic payment of tax-free damages for personal injuries established by settlement or judgment in resolution of a tort claim.<sup>9</sup> Florida law generally authorizes a structured settlement's recipient, with court approval, to transfer his or her right to receive payments under the structured settlement in exchange for a lump sum of cash.<sup>10</sup> Before a court approves such a transfer, the transferee must give the payee a disclosure statement containing specified information, including the amounts and due dates of the structured settlement payments to be transferred and the gross amount payable to the payee in exchange for the transfer.<sup>11</sup> The payee<sup>12</sup> must also file an application for the transfer in circuit court, which application must include:

- The payee's name, age, and county of domicile and the number and age of the payee's dependents;
- A copy of the transfer agreement;
- A copy of the transferee's disclosure statement;
- An explanation as to why the payee is seeking approval of the proposed transfer; and
- A summary of specified previous or other proposed transfers.<sup>13</sup>

The court must hold a hearing on the transfer application and determine, among other things, that the:

- Transfer is in the payee's best interests; and
- Net amount payable to the payee is fair, just, and reasonable under the existing circumstances.<sup>14</sup>

However, during the transfer proceedings, some payees and their family members, dependents, and beneficiaries<sup>15</sup> risk becoming the victims of criminal and other fraudulent acts connected to the disclosure of personal identifying information and annuity contract<sup>16</sup> numbers in related court records, which are currently open for public inspection.<sup>17</sup> Dishonest actors who purport to be from legitimate entities (such as the court or transferee) may use the personal identifying information and annuity contract numbers contained in public court records to intercept the transfer payment or obtain sensitive information, such as bank account and social security numbers.

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<sup>8</sup> *Id.* at 118.

<sup>9</sup> S. 626.99296(2)(m), F.S.

<sup>10</sup> A structured settlement recipient may seek to transfer his or her right to payment under the settlement because he or she needs cash immediately. S. 626.99296, F.S.

<sup>11</sup> S. 696.99296(3)(a), F.S.

<sup>12</sup> "Payee" means an individual who is receiving tax-free damage payments under a structured settlement (that is, the structured settlement's recipient) and proposes to make a transfer of payment rights under the structured settlement. S. 626.99296(2)(j), F.S.

<sup>13</sup> S. 696.99296(4)(d), F.S.

<sup>14</sup> S. 626.99296(3)(a) and (4)(c), F.S.

<sup>15</sup> A person maybe a beneficiary under a will or a trust.

<sup>16</sup> An "annuity contract" is a contract that requires periodic payments for more than one full year to the person entitled to receive the payments. A structured settlement typically involves an arrangement in which the defendant pays a lump sum to an insurance company to buy an annuity in the settlement recipient's name, after which the insurance company makes the periodic payments required under the settlement's terms. Internal Revenue Service, *Annuities – A Brief Description*, <https://www.irs.gov/retirement-plans/annuities-a-brief-description> (last visited Feb. 2, 2022).

<sup>17</sup> See s. 119.0714, F.S. (providing exemptions for certain court files and records but not for files and records related to a structured settlement).

## Effect of The Bill

The bill exempts from public records requirements the personal identifying information and annuity contract numbers of a structured settlement's payee and the names of such person's family members, dependents, and beneficiaries contained within a court file relating to a transfer proceeding. However, the bill provides that such information will remain exempt only during the pendency of the transfer proceeding and for six months after the final court order approving or denying the transfer application.

The bill provides a public necessity statement, as required by the Florida Constitution, indicating that the public records exemption is necessary because structured settlement payees have been the targets of criminal and fraudulent acts based upon publicly available identifying information and are especially vulnerable during transfer proceedings. The statement also provides that the harm that may result from the release of personal identifying information and annuity contract numbers of a structured settlement's payee and the names of such person's family members, dependents, and beneficiaries outweighs any public benefit that may be derived from such information's disclosure during the specified period.

The bill provides for automatic sunset on October 2, 2027, unless reviewed and saved from repeal through legislative reenactment.

The bill provides an effective date of July 1, 2022.

## II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

### A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

None.

### B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

The bill may cause clerks of the court to have to redact the excluded information from certain trust documents when a request for such documents is made. However, any costs associated with this requirement will likely be absorbed within existing resources.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill may keep structured settlement payees and their family members, dependents, and beneficiaries from becoming victims of criminal or other fraudulent acts connected to the immediate public disclosure of personal identifying information and annuity contract numbers contained in the court records related to a transfer proceeding.

D. FISCAL COMMENTS:

None.